

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

SIMON VARGAS AND JESE RIOS WHICH THE NYPD
MISSPELLED JESSI RIOS,

Plaintiff

-against-

Index No.

Purchased _____

VERIFIED COMPLAINT

THE CITY OF NEW YORK, DET. ODALIS PEREZ OF
NBBX, SHIELD# 07037, DET. LESLIE GAUVIN OF
NBBX, SHIELD # 04217, DET. RICARDO BOCACHICA
OF NBBX, SHIELD #00919 AND DET. JOSE A. PEINAN
OF NBBX, SHIELD# 02276,

Defendants

SIMON VARGAS and JESE RIOS, by their attorneys, PAPA, DEPAOLA AND
BROUNSTEIN, respectfully alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times mentioned, Plaintiff SIMON VARGAS was a resident of Bronx County, City and State of New York.
2. At all times mentioned, Defendant CITY OF NEW YORK, was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.
3. On or about the 14th day of January 2011 and within ninety (90) days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.

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BRONX COUNTY

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AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "7" with full force and effect as though set forth at length herein.
9. On or about October 19, 2010, at approximately 4:22 P.M. in the vicinity of the front of 815 East 167th Street, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff **SIMON VARGAS** in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A THIRD CAUSE OF ACTION

10. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "9" with full force and effect as though set forth at length herein.
11. On or about October 19, 2010, at approximately 4:22 P.M. in the vicinity of the front of 815 East 167th Street, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2010BX066230. The Plaintiff was thereafter held in

custody over the course of two (2) days before he was released on his own recognizance after arraignment. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his confinement.

AS AND FOR A FOURTH CAUSE OF ACTION

12. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "11" with full force and effect as though set forth at length herein.
13. Upon information and belief, on or about October 19, 2010 and from that time until the dismissal of charges on or about December 9, 2010 by the Honorable Judge presiding at, Bronx Supreme Court, Defendants DET. ODALIS PEREZ OF NBBX, SHIELD# 07037, DET. LESLIE GAUVIN OF NBBX, SHIELD # 04217, DET. RICARDO BOCACHICA OF NBBX, SHIELD #00919 AND DET. JOSE A. PEINAN OF NBBX, SHIELD# 02276, deliberately and maliciously prosecuted Plaintiff SIMON VARGAS, an innocent man without any probable cause whatsoever, by filing or causing a felony complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.
14. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the

Plaintiff.

15. The commencement of these criminal proceedings under Docket No. 2010BX066230 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.
16. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearance to defend his liberty against these unjust charges.

AS AND FOR A FIFTH CAUSE OF ACTION

17. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "16" as it set forth at length herein.
18. Defendants DET. ODALIS PEREZ OF NBBX, SHIELD# 07037, DET. LESLIE GAUVIN OF NBBX, SHIELD # 04217, DET. RICARDO BOCACHICA OF NBBX, SHIELD #00919 AND DET. JOSE A. PEINAN OF NBBX, SHIELD# 02276 were at all times relevant, duly appointed and acting officers of the City of New York Police Department.
19. At all times mentioned herein, said police officer was acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.
20. Plaintiff SIMON VARGAS is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.

21. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.
22. On or about October 19, 2010 the Defendants, armed police, while effectuating the seizure of the Plaintiff **SIMON VARGAS**, did search, seize, assault and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested and maliciously prosecuted without the Defendants possessing probable cause to do so. Further, the plaintiff was subjected to a warrantless strip search with cavity inspection even though the defendants did not possess a reasonable and/or probable cause to believe that the plaintiff had secreted contraband in or on his person.
23. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:
 - a. Freedom from assault to his person;
 - b. Freedom from battery to his person;
 - c. Freedom from illegal search and seizure;
 - d. Freedom from false arrest;
 - e. Freedom from malicious prosecution;
 - f. Freedom from the use of excessive force during the arrest process;
 - g. Freedom from unlawful imprisonment.
24. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate

indifference to those rights used the fourth and fourteenth amendments of the United States Constitution.

25. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A SIXTH CAUSE OF ACTION

26. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "25" with full force and effect as though set forth at length herein.
27. Defendant CITY OF NEW YORK has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.
28. The City of New York was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not be used where a criminal defendant is not resisting arrest.

29. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:
1. Probable cause must be present before an individual such as the Plaintiff herein can be arrested.
 2. Excessive force cannot be used against an individual who does not physically resist arrest.
 3. An individual such as the plaintiff herein cannot be subjected to a strip search with cavity inspection unless the police possess legal cause and/or have a reasonable suspicion and/or probable cause that the plaintiff has secreted contraband in or on his person.
30. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied him prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

AS AND FOR A SEVENTH CAUSE OF ACTION

31. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "30" as it set forth at length herein.
32. Defendant City of New York was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said

Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the CITY OF NEW YORK and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

AS AND FOR A EIGHTH CAUSE OF ACTION

33. At all times mentioned, Plaintiff JESE RIOS was a resident of Bronx County, City and State of New York.
34. At all times mentioned, Defendant CITY OF NEW YORK, was and is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.
35. On or about the 14th day of January 2011 and within ninety (90) days after the claim herein arose, the Plaintiff served a Notice of Claim in writing sworn to on their behalf upon the Defendant CITY OF NEW YORK, by delivering a copy thereof in duplicate to the officer designated to receive such process personally, which Notice of Claim advised the Defendant CITY OF NEW YORK, of the nature, place, time and manner in which the claim arose, the items of damage and injuries sustained so far as was then determinable.
36. At least thirty (30) days have elapsed since the service of the claim prior to the commencement of this action and adjustment of payment thereof has been neglected or refused, and this action has been commenced within one year and ninety (90) days after the happening of the event upon which the claims are based.

37. The Plaintiff has complied with the request of the municipal Defendant's for an oral examination pursuant to Section 50-H of the General Municipal Law and/or the Public Authorities Law and/or no such request was made within the applicable period.
38. Upon information and belief, at all times mentioned, Defendants, DET. ODALIS PEREZ OF NBBX, SHIELD# 07037, DET. LESLIE GAUVIN OF NBBX, SHIELD # 04217, DET. RICARDO BOCACHICA OF NBBX, SHIELD #00919 AND DET. JOSE A. PEINAN OF NBBX, SHIELD# 02276, were and are police officers of the Defendant City of New York, and at all times herein were acting in such capacity as the agents, servants and employees of the Defendant, THE CITY OF NEW YORK.
39. On or about October 19, 2010, at approximately 4:22 P.M. in the vicinity of the front of 815 East 167th Street, County of Bronx, State of New York, the Defendants jointly and severally in their capacity as police officers, wrongfully touched, grabbed, handcuffed and seized the Plaintiff JESE RIOS, in an excessive manner about his person, causing him physical pain and mental suffering. At no time did the Defendants have legal cause to grab, handcuff seize or touch the Plaintiff, nor did the Plaintiff consent to this illegal touching nor was it privileged by law.

AS AND FOR A NINTH CAUSE OF ACTION

40. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "39" with full force and effect as though set forth at length herein.

41. On or about October 19, 2010, at approximately 4:22 P.M. in the vicinity of the front of 815 East 167th Street, County of Bronx, State of New York the Defendants, jointly and severally did place Plaintiff JESE RIOS in imminent fear of physical contact by approaching the Plaintiff with their loaded firearms, outstretched limbs and other objects which they used to physically seize, strike and restrain the Plaintiff. All of the above actions placed the Plaintiff in imminent fear of physical contact. At no time did the Plaintiff consent to the unlawful actions of the Defendants.

AS AND FOR A TENTH CAUSE OF ACTION

42. Plaintiff repeats, reiterates and re-alleges all of the allegations contained in Paragraphs "1" through "41" with full force and effect as though set forth at length herein.
43. On or about October 19, 2010, at approximately 4:22 P.M. in the vicinity of the front of 815 East 167th Street, County of Bronx, State of New York the Defendants, jointly and severally without any warrant, order or other legal process and without any legal right, wrongfully and unlawfully arrested the Plaintiff, restrained him and his liberty and then took him into custody to a police station in the County of the Bronx and there charged him with the crimes on Docket No. 2010BX066231. The Plaintiff was thereafter held in custody over the course of two (2) days before he was released on his own recognizance after arraignment. The Defendants intentionally confined the Plaintiff without his consent and the confinement was not otherwise privileged by law and, at all times, the Plaintiff was conscious of his

confinement.

AS AND FOR A ELEVENTH CAUSE OF ACTION

44. Plaintiff incorporates, repeats, and re-alleges all of the allegations contained in Paragraphs "1" through "43" with full force and effect as though set forth at length herein.
45. Upon information and belief, on or about October 19, 2010 and from that time until the dismissal of charges on or about December 9, 2010 by the Honorable Judge presiding at, Bronx Supreme Court, Defendants **DET. ODALIS PEREZ OF NBBX, SHIELD# 07037, DET. LESLIE GAUVIN OF NBBX, SHIELD # 04217, DET. RICARDO BOCACHICA OF NBBX, SHIELD #00919 AND DET. JOSE A. PEINAN OF NBBX, SHIELD# 02276,** deliberately and maliciously prosecuted Plaintiff **JESE RIOS** , an innocent man without any probable cause whatsoever, by filing or causing a felony complaint to be filed in the Criminal Court of the City of New York, Bronx County, for the purpose of falsely accusing the plaintiff of violations of the criminal laws of the State of New York.
46. The Defendants, jointly and severally, their agents, servants or employees failed to take reasonable steps to stop the prosecution of the Plaintiff and instead maliciously and deliberately provided false and/or incomplete information to the District Attorney's office to induce prosecution of the Plaintiff.
47. The commencement of these criminal proceedings under Docket No. 2010BX066231 was malicious and began in malice and without probable cause, so that the proceedings could succeed by the Defendants.

48. As a result of the malicious prosecution, Plaintiff was deprived of his liberty and suffered the humiliation, mental anguish, indignity and frustration of an unjust criminal prosecution. The Plaintiff made multiple court appearance to defend his liberty against these unjust charges.

AS AND FOR A TWELFTH CAUSE OF ACTION

49. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "48" as it set forth at length herein.
50. Defendants **DET. ODALIS PEREZ OF NBBX, SHIELD# 07037, DET. LESLIE GAUVIN OF NBBX, SHIELD # 04217, DET. RICARDO BOCACHICA OF NBBX, SHIELD #00919 AND DET. JOSE A. PEINAN OF NBBX, SHIELD# 02276** were at all times relevant, duly appointed and acting officers of the City of New York Police Department.
51. At all times mentioned herein, said police officer was acting under color of law, to wit: the statutes, ordinances, regulations, policies and customs and usage of the State of New York and/or City of New York.
52. Plaintiff **JESE RIOS** is and at all times relevant herein, a citizen of the United States and a resident of Bronx County in the State of New York and brings this cause of action pursuant to 42 United States Code, Section 1983 and 42 United States Code, Section 1988.
53. The Defendant **CITY OF NEW YORK** is a municipality duly incorporated under the laws of the State of New York.
54. On or about October 19, 2010 the Defendants, armed police, while effectuating the seizure of the Plaintiff **JESE RIOS**, did search, seize, assault

and commit a battery and grab the person of the Plaintiff without a court authorized arrest or search warrant. They did physically seize the person of the Plaintiff during the arrest process in an unlawful and excessive manner. The Plaintiff was falsely arrested and maliciously prosecuted without the Defendants possessing probable cause to do so. Further, the plaintiff was subjected to a warrantless strip search with cavity inspection even though the defendants did not possess a reasonable and/or probable cause to believe that the plaintiff had secreted contraband in or on his person.

55. The above action of the Defendants resulted in the Plaintiff being deprived of the following rights under the United States Constitution:

- a. Freedom from assault to his person;
- b. Freedom from battery to his person;
- c. Freedom from illegal search and seizure;
- d. Freedom from false arrest;
- e. Freedom from malicious prosecution;
- f. Freedom from the use of excessive force during the arrest process;
- g. Freedom from unlawful imprisonment.

56. The Defendants subjected the Plaintiff to such deprivations, either in a malicious or reckless disregard of the Plaintiff's rights or with deliberate indifference to those rights used the fourth and fourteenth amendments of the United States Constitution.

57. The direct and proximate result of the Defendants' acts are that the Plaintiff has suffered severe and permanent injuries of a psychological nature. He was forced to endure pain and suffering, all to his detriment.

AS AND FOR A THIRTEENTH CAUSE OF ACTION

58. Plaintiff incorporates, repeats and re-alleges all of the allegations contained in Paragraphs "1" through "57" with full force and effect as though set forth at length herein.
59. Defendant CITY OF NEW YORK has grossly failed to train and adequately supervise its police officers in the fundamental law of arrest, search and seizure especially when its police officers are not in possession of a court authorized arrest warrant and where an individual, especially as here, has not committed a crime and has not resisted arrest, that its police officers should only use reasonable force to effectuate an arrest and the arrest should be based on probable cause.
60. The City of New York was negligent by failing to implement a policy with its Police Department and instruct police officers who, absent the consent of the Plaintiff (or similarly situated individuals) or without the possession of a court authorized arrest a search warrant, said police officers of the City of New York are not to arrest individuals such as the Plaintiff here where probable cause is lacking and the use of force should only be reasonable when an individual resists arrest and should not be used where a criminal defendant is not resisting arrest.
61. **THE CITY OF NEW YORK** is negligent due to its failure to implement a policy with its Police Department or actively enforce the law, if any of the following are lacking:
1. Probable cause must be present before an individual such as the Plaintiff herein can be arrested.

2. Excessive force cannot be used against an individual who does not physically resist arrest.
 3. An individual such as the plaintiff herein cannot be subjected to a strip search with cavity inspection unless the police possess legal cause and/or have a reasonable suspicion and/or probable cause that the plaintiff has secreted contraband in or on his person.
62. The foregoing acts, omissions and systemic failures are customs and policies of the **CITY OF NEW YORK** which caused the police officers to falsely arrest, maliciously prosecute, seize illegally and search the Plaintiff commit an assault/battery to his person and denied him prompt medical attention under the belief that they would suffer no disciplinary actions for their failure to take proper or prudent steps in this case.

AS AND FOR A FOURTEENTH CAUSE OF ACTION

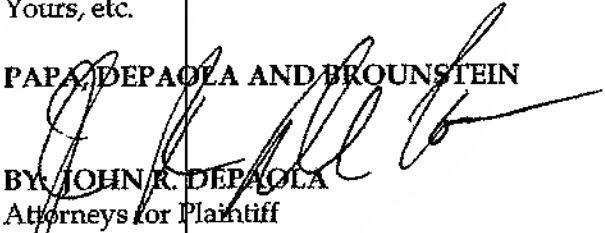
63. Plaintiff repeats, reiterates, and re-alleges all of the allegations contained in paragraphs "1" through "62" as it set forth at length herein.
64. Defendant City of New York was negligent in that prior to and at the time of the acts complained of herein, due to the prior history of the Police Officer Defendants, knew or should have known of the bad disposition of said Defendants or had knowledge of facts that would put a reasonably prudent employer on inquiry concerning their bad disposition and the fact that these officers were not suitable to be hired and employed by the **CITY OF NEW YORK** and that due to their lack of training, these officers should have had adequate supervision so that they would not arrest innocent individuals nor use excessive force during the arrest process.

WHEREFORE, Plaintiff demands judgment against the Defendants, together with the costs and disbursements of this action in the amount of damages greater than the jurisdictional limit of any lower court where otherwise have jurisdiction, together with attorneys' fees and costs for bringing this case and punitive damages.

Dated: Bayside, New York
 June 17, 2011

Yours, etc.

PAPA, DEPAOLA AND BROUNSTEIN


BY JOHN R. DEPAOLA
Attorneys for Plaintiff
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

____X
SIMON VARGAS AND JESE RIOS WHICH THE NYPD
MISPELLED JESSI RIOS,

Index No.
Purchased:

Plaintiff

VERIFICATION

-against-

THE CITY OF NEW YORK, DET. ODALIS PEREZ OF
NBBX, SHIELD# 07037, DET. LESLIE GAUVIN OF
NBBX, SHIELD # 04217, DET. RICARDO BOCACHICA
OF NBBX, SHIELD #00919 AND DET. JOSE A. PEINAN
OF NBBX, SHIELD# 02276,

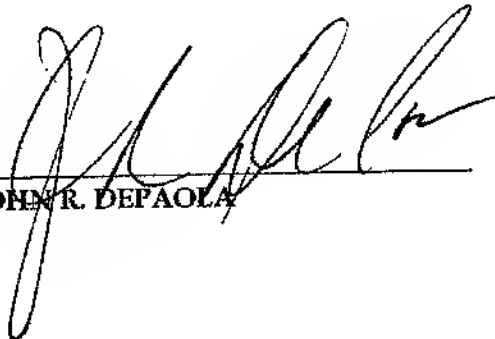
Defendants

____X

I, JOHN R. DEPAOLA, an attorney admitted to practice in the courts of New York State, state that I am a member of the firm of PAPA, DEPAOLA AND BROUNSTEIN, the attorneys of record for Plaintiffs in the within action; I have read the foregoing and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by Plaintiff is because Plaintiff resides outside the county where deponent maintains his office.

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated: Bayside, New York
June 17, 2011


JOHN R. DEPAOLA